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No. 934

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

LAN JING-CHAU, ET AL., PETITIONERS

v.

A. O. ANDERSEN & CO., AMERICAN CYANAMID COMPANY, ET AL., RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONERS' REPLY BRIEF

It is of course no answer to the petition herein to suggest as do A. O. Andersen & Co. and American Cyanamid Co. that they should escape liability for their own plain faults in the carriage of this lethal chemical acrylonitrile because the lower Courts have allowed recovery against the owners of the UNION RELIANCE. Such suggestions lead one to conclude that no valid, substantial points in opposition to the petition can be advanced.

Certainly none such have been put forward by A. O. Andersen & Co.

Nor in reality have any substantial points in opposition been made by American Cyanimid Co.: It attempts, in the face of the evidence of the death of the captain of the BEREAN from acrylonitrile poisoning caused by inhalation of fumes, and the plain statements of the extreme toxicity to man of the chemical set forth in its own descriptive pamphlet, to contend (on pages 1 and 2 of its brief) that while inflammable and explosive within certain limits that it is really no more toxic than most petroleum derivatives (*no mention being made* of its extreme toxicity from skin absorption or ingestion—very important matters indeed under the facts of this case) as far as its "fumes" go.

And then it argues, with such admissions of toxicity in its brief, and the much greater undisputed detailed evidence of the chemical's lethal properties in the record and its toxicity to man so established as fully known, it is completely insulated from fault by a specific Coast Guard classification, when the broad regulation, 46 C.F.R. § 146.25-10, in clear language makes the chemical a Class B poison and thus requires carriage quite different from that here employed. The carriage employed indisputably resulted in the deaths of those on whose behalf this petition is filed.

It is really rather extreme to state (on page 3 of the brief) that carriage in inner tanks, or spaces protected by cofferdam voids, is not designed to avoid as far as possible and still permit water transportation escape of the chemicals in a ship collision, when the statute, 46 U.S.C. § 170(7), and the Coast Guard Regulation, 46 C.F.R. § 146.01-1, plainly state the purpose of regulation of water transportation of dangerous substances is to protect health, life, limb, and property.

And it then argues that the industrial standards of care which the uncontradicted evidence established are usually employed in the transportation of dangerous, poisonous chemicals do not apply to this particular chemical acrylonitrile!

Petitioners respectfully urge that such contentions are plainly unsound, for the detailed reasons set forth in their petition.

Respectfully submitted,

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